IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7864 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

CONCILATION OFFICER AND DEPUTY LABOUR COMMISSIONER

Appearance:

1. Special Civil Application No. 7864 of 2001

MR HS MUNSHAW for Petitioner No. 1

..... for Respondent No. 1

MR CHUDGAR for NANAVATI ASSOCIATES for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/04/2002

ORAL JUDGEMENT

#. Heard Mr. H.S. Munshaw, learned advocate appearing on behalf of the petitioner - Corporation and Mr. Nandish Chudgar, learned advocate appearing on behalf of M/s. Nanavati Associates for respondent.

#. The petitioner Corporation has challenged the order passed by the Conciliation Officer, Ahmedabad in Approval application No. 338/1999 dated 23rd October, 2000 wherein the approval application has been rejected by the Conciliation Officer while exercising the powers under Section 33 (2)(b) of the Industrial Disputes Act, 1947.

#. Learned advocate Mr. H.S. Munshaw for the petitioner Corporation has submitted that the respondent workman has remained negligent and not properly managed the affairs of the depot and remained absent and therefore, due to his absence, there was heavy loss caused to the petitioner Corporation and as a result thereof, there was mismanagement in the depot when the traffic rush was very high. Therefore, chargesheet was served on the respondent workman and after completion of the departmental inquiry, the respondent workman was dismissed from service on 12th April, 1999. Mr. Munshaw has submitted that the Conciliation Officer while exercising the powers under Section 33 (2)(b) of the Industrial Disputes Act has no powers to reappreciate the evidence and to decide the legality and validity of the finding and the question of penalty also. Therefore, the Conciliation Officer has committed error in rejecting the approval application. He has also submitted that some punishment may be imposed for the misconduct of negligence proved against the respondent workman.

#. Learned advocate Mr. Chudgar on behalf of the respondent workman has submitted that the Conciliation Officer has rightly appreciated the evidence led in the departmental inquiry and also examined the validity of the finding and ultimately the Conciliation Officer has come to the conclusion that the petitioner Corporation has not proved the prima facie case before the authority and therefore, the approval application has been rightly rejected by the Conciliation Officer. Mr. Chudgar has also submitted that the petitioner Corporation has not considered the defence and explanation given by the respondent workman and the same was taken into account by the Conciliation Officer and therefore, approval application has been rightly rejected. He has further submitted that in departmental inquiry except reporter, no incident witness was examined and the competent authority who has acted as Prosecutor and Judge and therefore, the inquiry is vitiated. This aspect has been rightly appreciated by the Conciliation Officer. The Conciliation Officer has also rightly observed that whatever statements made by the reporter in departmental inquiry, said statements are required to be proved by

leading documentary evidence as well as oral evidence before the departmental authority and therefore, the Conciliation Officer has not committed any error while rejecting the approval application.

#. I have considered submissions of the learned advocates for the parties. The respondent workman was working as ATS, Porbandar Depot in Junagadh division at the relevant time. Two chargesheets were served on the respondent workman, one in respect of default case No. 358/98 and the second default case number is 369/1998. The allegation made in default case No. 358/98 is that the respondent workman had remained negligent while working as ATS and not taking the work from lower staff and not given any explanation of Memo No. 2570 and hence, chargesheet was served on the respondent workman and after departmental inquiry, punishment has been imposed on the respondent workman lowering him down three stages in the scale of ATS vide order dated 5th April, 1999. In respect of default case No. 369/1998, wherein the report was submitted by the Depot Manager on 25th August, 1998 and chargesheet was served on 23rd September, 1998 and reply was given on 24th September, 1998. Thereafter, departmental inquiry was fixed on 15th October, 1998 and 4th February, 1999 and show cause notice was served on 23rd February, 1999 and reply was submitted on 1st March, 1999 and thereafter, dismissal order was passed on 12th April, 1999. In both these chargesheets similar allegations were made against the respondent workman. The default case No. 369/98 is relating to incident dated 16th August, 1998 and earlier chargesheet is in respect of the incident dated 14th August, 1998. The report was submitted in both these cases by the Depot Manager and similar allegations were made in both these chargesheets by the reporter - Depot Manager. In one of the cases, he was dismissed and in another case, he was lowered down three stages in the scale. Prima facie, it shows that there was some vengeance and/or malafide on the part of the Corporation to harass the respondent workman because the misconduct which has been alleged against the respondent workman to remain negligent and not properly managed the affairs of the depot while working as ATS.

#. This Court has perused the entire order passed by the Conciliation Officer. The Conciliation Officer has considered relevant evidence which was led in departmental inquiry and come to the conclusion that in respect of these two separate chargesheets, inquiry was held on 4th February, 1999 and on the same day, inquiry was completed by the competent authority. From the

record, it was found by the Conciliation Officer that the respondent workman has performed his duties on 15th August, 1998 and 16th August, 1998 upto 10.00 morning and 14.00 p.m. The Conciliation Officer has also observed that on 16th August, 1998 Traffic Inspector and the Assistant Traffic Inspector has been granted leave by Divisional Controller. The Conciliation Officer has also found out the defect in the departmental inquiry that except reporter, no other independent evidence has been taken into consideration by the competent authority and the competent authority has acted as Prosecutor and Judge because no Presenting Officer remained present in the departmental inquiry. Therefore, the competent authority clearly seems to have acted as Prosecutor and Judge because he was questioning the reporter as well as to the respondent workman in the manner of cross examination by either side to each person who has deposed before the competent authority. The Conciliation Officer has also come to the conclusion that the procedure which has been adopted by the competent authority in departmental inquiry is contrary to the Rules as well as principles of natural justice and therefore, the Conciliation Officer has come to the conclusion that considering the decision of the Apex Court and also considering the fact that the petitioner Corporation has not considered the explanation and reply given by the respondent workman. Therefore, ultimately the Conciliation Officer has rejected the approval application.

#. The Conciliation Officer is having powers to consider the defect in inquiry as well as to consider the validity of the finding. This aspect has been examined by the Apex Court in case of LALLA RAM Vs. MANAGEMENT OF D.C.M. CHEMICAL WORKS LTD. & ANR. reported in AIR 1978 SC 1004. The relevant observations made in para 12 are referred as under.

"12. The position that emerges from the above quoted decisions of The position that emerges from the above quoted decisions of this Court may be stated thus : In proceedings under section 33(2)(b) of the Act, the jurisdiction of the industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal

did not amount to unfair tabour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in Bengal Bhatdee Coal Co, v. Ram Probesh Singh(1), Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar(2), Hind Construction & Engineering Co. Ltd. v. Their Workmen(3), Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management & Ors(4), and Eastern Electric and Trading Co. v. Baldev Lal(5) that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (iv) whether the employer has paid or offered to pay wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonably short time as to form part of the game transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the tabour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him."

#. In one more decision in case of Central Bank of India Limited, New Delhi vs. Prakash Chadn Jain, where the Conciliation Officer while deciding the approval application under Section 33(2)(b), it is held that the Conciliation Officer is entitled to go through and consider the validity of the finding is based upon the

legal evidence or not. This aspect has been considered by the Apex Court in case of Central Bank of India Limited, New Delhi vs. Prakash Chadn Jain reported in 1969 [2] LLJ pg.377. Relevant Head Note portion is referred as under :-

"The appeal was preferred against the order of the industrial tribunal rejecting approval sought for by the appellant bank under S.33 [2][b] of the Industrial Disputes Act. The acts of misconduct levelled against the workman were alleged to have fallen under Para.521-4 [J] of the Sastri award. The tribunal, when dealing with the application for approval, held that the enquiry held by the enquiry officer was fair, and was not vitiated by any irregularity or unfairness but refused to accord approval on the ground that the findings rendered by the enquiry officer were perverse and were not based on evidence inasmuch as most of the findings were the result of mere conjecture of the enquiry officer.

Rejecting the contention of the counsel for the appellant - bank that the tribunal, refusing to accord approval and in disregarding the findings recorded by the enquiry officer, exceeded its jurisdiction conferred by S.33[2][b] of the Act and the tribunal having once held that the enquiry was fair, it had not jurisdiction to go into the correctness of the findings of the enquiry officer as an appellant Court, held that the tribunal can disregard the findings given by the enquiry officer in an application under S.33[2][b] of the Industrial Disputes Act only if the findings are perverse. The test of perversity is that the findings may not be supported by legal evidence. Yet another case of perversity is that when the findings are such which no reasonable person could have arrived at on the basis of the materials before him. Though in regard to certain elements of the acts of misconduct, the tribunal erred in assessing the perversity of the evidence adduced before the enquiry officer at the domestic enquiry, and though such an enquiry officer was not bound to observe the technical rules of evidence, held in the instant case that substantive rules of evidence which would form part of principles of natural justice have been ignored by the enquiry officer, when he based his findings on hearsay

evidence.

It is true that in various cases it has been held that domestic tribunals like an inquiry officer are not bound by the technical rules about the evidence in the Indian Evidence Act but it has nowhere been laid down that even substantive rules which would form part of principles of natural justice also could be ignored by the domestic tribunals. he principles that a fact sought to be proved must be supported by statements made in the presence of the person against whom enquiry is held and that the statements made behind the person charged are not to be treated as substantive evidence is one of the basic principles of natural justice which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act. A domestic tribunal would not be justified in recording its finding on the basis of hearsay evidence without having any direct or substantive evidence in support of such findings. In other words, the findings recorded by the enquiry officer must be supported by legal evidence. The evidence should consist of statements made in the presence of the workman in the presence of the workman charged and exception is envisaged where the previous statements could be used after giving copies of the statements well in advance to the workman charged but with further qualifications that previous charged must be affirmed as truthful in a general way when the witness is actually examined in the presence of the workman charged.

Applying the above principles and on merits, held that the findings of the enquiry officer were not based on any legal evidence in regard to the two charges leveled against the workman even though partly the first of the charges could be held to be proved."

Industrial Disputes Act, 1947 - Section 33(2)(b), - scope of jurisdiction of Industrial Tribunal to entertain with the finding of the inquiry officer at the domestic inquiry, explained - Rejection of approval by tribunal upheld on the ground that evidence relied upon at the domestic inquiry being not legal evidence, finding was perverse what is a perverse finding is explained."

#. In view of the above observations of the Apex Court and considering the settled position of law set out by the Apex Court, according to my opinion, the Conciliation Officer has rightly examined the issue and given cogent reasons in support of its conclusion and no error has been committed by the Conciliation Officer while rejecting the approval application and no jurisdictional error as well as procedural irregularity committed by the Conciliation Officer which requires any interference of this Court while exercising the powers under Articles 226 and 227 of the Constitution.

##. It is also pertinent to note that the order passed by the Conciliation Officer is dated 23rd October, 2000 and petition has been filed by the Corporation on 26th February, 2001 but there was some mistake in typing Annexure and therefore, fresh petition was filed on 14th August, 2001 but meanwhile, as per statement made by the learned advocate Mr. Chudgar the respondent workman has been reinstated in service before filing fresh petition. Not only this, but promotion has also been granted recently in favour of the respondent workman. Therefore, considering the totality of the overall facts and circumstances of the case, there is no substance in this petition and the same requires to be rejected. Therefore, this petition is rejected accordingly.

Rule is discharged with no order as to costs.
Direct service is permitted to respondent.

Date: 3.4.2002 (H.K.Rathod, J.)

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